IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

MONDAY, THE 16TH JULY 2007 / 25TH ASHADHA 1929

CRP.No. 1845 of 2003()

CMA.67/2000 of I ADDL. DISTRICT COURT, PALAKKAD
PROCEEDINGS NO.A2-2177/98 OF THE DIVISIONAL FOREST OFFICER, PALAKKAD.

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REVN. PETITIONER: APPELLANT/RESPONDENT.

C.K.MOHAMMED ALI, S/O.HAMZA, RESIDING
AT CHEMMAMKUZHI VEEDU, ALIPARAMBU, VAZHAKKAD PO.,
PERINTHALMANNA TALUK, MALAPPURAM DISTRICT.

BY ADV. SRI.V.CHITAMBARESH
SRI.T.C.SURESH MENON
SMT.M.R.VALSA
SMT.G.GEETHISHA

RESPONDENTS: RESPONDENTS/NOT PARTY.

1. THE STATE OF KERALA REP. BY THE
DISTRICT COLLECTOR, PALAKKAD.

2. THE DIVISIONAL FOREST OFFICER,
(AUTHORISED OFFICER)PALAKKAD FOREST DIVISION,
HEMAMBIKA NAGAR PO., PALAKKAD.

BY SPL. GOVERNMENT PLEADER FOR FOREST SRI M.P.PRAKASH

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 16/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON CMP.NO.1800/2003 IN C.R.P.NO.1845/2003

DISMISSED

16/7/2007 Sd/- P.R.RAMAN, JUDGE.

P.R.RAMAN J.

C.R.P.No.1845 OF 2003

Dated this the 16th day of July, 2007

O R D E R

Petitioner is aggrieved by the order passed by the District Court, Palakkad dismissing the appeal, C.M.A.No.67/2000 confirming the order passed by the Divisional Forest Officer in Proceedings No.A2-2177/98, by which the Jeep bearing Regn. No.KRP 4930 belonging to the petitioner was found involved in a forest offence and was ordered to be seized.

2. On 5/4/1998 the Section Forester while inspecting the forest land, known as "Chemparathimala" and while reaching the place "Manchakkallu" which is closed to "Nellaya Cherplassery" road, found that two persons were carrying timber pieces from the above forest area and loading it into a jeep KRP 4930 which was put very close to adjacent Government forest at the above road. It was also found that a gang of 11 persons were engaged in cutting trees and collecting timber and firewood trespassing into the Government forest area. The Forest Officer accordingly detained the persons and jeep. It was found that the 3 acres of Government forest area was cleared by these persons by cutting the trees and clearing the under

growth illegally. Among the trees so cut includes 95 nos. of Teakwood, 1 no. of Rosewood, 1 no. of Sandalwood, 1 no. of Venga tree, 8 nos. of Mullankayani, 12 nos. Vatta, 7 nos. of Manjapavatta, 2 nos. of Pathiri, 4 nos. of Idinjal, 6 nos. of Vaha, 3 nos. of Kanjiram, 3 nos. of Mullilam, 1 no. of Sindoram (total 144 nos.) and Teak poles 250 nos. (below 15 cm. in girth). About 1 MT of firewood collected from above felled trees. It was found that the above 11 persons having trespassed into the Government forest for encroaching forest area and illicitly felling of trees and clearing under growth, were arrested and the jeep was also seized after preparing a mahazar. Petitioner is one among the several persons so arrested. An offence was booked in Ottapalam Range as OR-10/98 under Section 27(i)(d), (ii), (iii) (iv) 52 (i) and Section 61A of the Kerala Forest Act. As per the statement of allegation, the 3rd accused Sebastian, Surveyor of the Forest Mini Survey, under the Assistant Director of Survey, Forest Mini Survey, Thiruvananthapuram with his active collusion with the arrested accused committed this offence. The arrested persons were produced before the Judicial First Class Magistrate's Court on 6/4/1998 and they were remanded to sub jail. The jeep, which was used for attempted transport of Thondy materials, was seized and produced before the Divisional Forest Officer, Palakkad. In the meanwhile, an enquiry report was submitted and a detailed investigation was conducted in the matter. All the accused persons including the petitioner gave

statement. In the statement made by the petitioner, he admitted the offence. He stated that he along with Kunhahammed (Accused No.2) with 8 workers were cleared about 3 acres of forest area and he had also prior knowledge that the area is a Government forest and this offence was committed with the connivance of the Surveyor, who rendered all help. It is also admitted that he is the owner of the jeep seized and the jeep was brought to the spot in order to transport the firewood collected from the trees. The other accused persons also gave similar statements admitting the guilt. In the statement given by the 2nd Accused, it was revealed that Mohammed and Pokker had given about 6 1/2 acres of land near Manjakkal area of Pattambi-Cherplassery road to him on a power of attorney about 5 months ago, which is the land under the possession of the Government. Since it is likely to take some time to settle the dispute, it was decided to overcome the delay by a shortcut method. It was accordingly that he met Sri Sebastian, the Surveyor of Forest Mini Survey through a mediator. It appears an amount of Rs.1.5 lakhs towards expenditure was claimed which was subsequently reduced to 1.20 lakhs and the Surveyor demanded Rs.60,000/- as advance, that was agreed to. On the next day an amount of Rs.60,000/- was entrusted to him and it was decided to pay the balance amount on clearing all the papers and records by the Surveyor. A further amount of Rs.20,000/- also was paid on 2/4/1998. It was informed by the Surveyor that since the records are

already ready, instructions were given to cut the trees and clear the areas by retaining cashew and jack trees if any. The Surveyor also directed them to burn the cleared area properly. Tree felling started on the area and the Surveyor visited the spot on the first day and on his demand, Rs.20,000/- was again given to him. Before felling of the trees in the said area, the Surveyor had demarcated about 6 1/2 acres by fixing new survey stones out of which about 3 acres were already cleared and they were caught by the forest officials while attempting to remove the timber and firewood collected from the said area. This statement of Kunhimohammed was fully endorsed by the mediator Narangakunju alias Kunhumohammed, son of Unnimammu. From the file it is disclosed that there were previously 3 OAs in respect of 6.58 acres of land. O.A. Nos.19/92, 83/92 and 85/92 an extent of 1.58 acres, 3 acres and 2 acres respectively in Sy.No.75/12 and 73/3. These O.As were dismissed by the Forest Tribunal by a common order dated 19/91995. It is stated that the entire area is in exclusive possession of the Forest Department. After the order of the Tribunal, Pokker, the petitioner in O.A.No.83/92, had filed O.S.No.258/96 before the Sub Court, Ottapalam claiming 3 acres of land, the disputed property in O.A.No.83/92. It is stated that since the Forest Tribunal has dismissed the case and the land being a forest, the act committed by the petitioner herein in trespassing into the forest area and cutting trees is a clear case of forest offence and therefore the vehicle

attempted to carry wood is liable to be confiscated.

3. The petitioner contended that on 5/4/1998 he along with his driver was coming to Nellaya from Cherplassery in his Jeep 4930 and on reaching Manjakkallu, they found two forest guards standing on the road along with Kunhahammed (Accused No.2). Since Kunhahammed was related to the petitioner, he stopped the jeep and enquired about the presence. Kunhahammed is stated to have told that the forest guards wanted a lift to the forest office and accordingly lift was allowed and on reaching forest office, Kulappully, they changed their attitude and detained the petitioner along with others and produced before the Magistrate's Court. Petitioner denied his involvement in any forest offence.

4. The vehicle involved in this case has been released to the petitioner on furnishing a bank guarantee based on an order passed by this Court. Thereafter, the case was tried and finally he was found guilty of the offence. The Divisional Forest Officer has followed the procedure laid down by law before holding that the petitioner's vehicle is involved in the offence. Show cause notices were issued to all the accused persons including the petitioner. Accused 1, 2, 9 and 12 and two witness were examined. Petitioner produced a partition deed No.2469/90 and also placed reliance on the injunction order passed by the civil court in O.S.No.2258/96 in respect of 5.21 acres of land comprised in

Sy.Nos.75/1, 75/2 and 73/3. It appears that the interim orders if any passed by the Sub Court was not however produced before the Divisional Forest Officer, in spite of time granted to the petitioner. He proceeded to discuss the evidence on record and based on the statement already filed by the respective parties and in the attendant circumstances, he came to the irresistible conclusion that it is undoubtedly established that the jeep KRP 4930 was used for commitment of forest offence as described and it was with the full knowledge and consent of the owner and his driver. Besides confiscating the vehicle, separate proceedings were also taken for prosecution under Section 27 read with Section 62 of the Kerala Forest Act. This order was appealed to the District Court. The court below considered the legality or otherwise of the order passed by the Divisional Forest Officer and whether any ground is made out for interference. In this regard, the statement given by the parties before the Divisional Forest Officer was looked into by the court below. The court below found that there is nothing to disbelieve the genuineness of the statement alleged to have been made by the appellant (petitioner herein) especially in the light of the assurance by one Sebastian, who is working as Surveyor in the Forest Mini Survey, Thiruvananthapuram. The court below did not find in the factual situation any reason to interfere with the order passed by the Divisional Forest Officer. It is against this order that the present C.R.P. is filed.

5. The learned counsel Sri V. Chitambaresh appearing for the petitioner contended that in view of the order of injunction passed by the civil court, it must be presumed that it is not a forest land and hence no forest offence as alleged is committed. He also placed reliance on the order of the Forest Tribunal in O.A.Nos.19/92, 83/93 and 85/92. As rightly found by the Divisional Forest Officer, the above O.As. were dismissed by the Forest Tribunal. It is not shown before me that there was any appeal filed before this Court reversing the said order. On the other hand, an attempt was made to approach the civil court to obtain an order of injunction. Merely because there is an order of injunction, it does not per se would show that the land from where the trees were cut is not a forest land. The only authority competent to decide as to whether this is a forest land or not is the Forest Tribunal. In the absence of any order of that Tribunal holding that the area from where the trees were cut is not a forest area, the petitioner cannot succeed. On the other hand, the Divisional Forest Officer reached a conclusion that they knew that this is a Government Forest Land and with the connivance of an officer that they had committed the offence. The only question that arise for consideration in this revision is as to whether in such circumstances, the order passed by the District Court suffers from any error or illegality warranting interference of this Court under Section 115 of the C.P.C. I have in extenso discussed the matter and from the factual situation and also from

the evidence on record already appreciated by two authorities, I do not find that there is any illegality committed by the court below warranting interference of this Court under Section 115 of the C.P.C.

Accordingly, C.R.P. is dismissed.

P.R.RAMAN,
Judge.

kcv.